

Table 1” (Election Requirement at page 2), Applicants traversed the election requirement and provisionally elected SEQ ID NO: 7212 for further prosecution. *See* Response to Election Requirement dated October 2, 2002 (“Response”) at page 1.

Applicants respectfully point out that the Examiner, in the Election Requirement, also required upon election of a SEQ ID NO, that “Applicants should further identify the protein of Table 1, if any, that corresponds to the elected invention.” Election Requirement at page 2. In support of Applicants’ objection and traversal to such a requirement, Applicants stated “that claims 1 through 4 are directed to a nucleic acid molecule having a nucleic acid sequence selected from the group consisting of SEQ ID NO: 1 through SEQ ID NO: 52202 or complements thereof.” Response at page 1. Thus, the additional requirement by the Examiner that Applicants should further identify the protein in Table 1 that corresponds to the elected invention is inappropriate as applied to claims 1 through 4.

Applicants also pointed out that claims 5 through 7 “are directed to a nucleic acid molecule encoding a protein or fragment thereof selected from the group consisting of a rice protein or fragment thereof from Table 1.” Response at page 1. Thus, in response to the Examiner’s additional requirement that Applicants identify the protein of Table 1 that corresponds to the elected invention, Applicants draw the Examiner’s attention, with respect to claims 5 through 7, to the fact that in Table 1, SEQ ID NO: 7212 corresponds to a probable gibberellin C-20 oxidase. *See* Table 1, SEQ ID NO: 7212, molecule corresponding to a gene from *Oryza sativa* and Response at pages 1-2.

In sum, Applicants have provisionally elected, with traverse, SEQ ID NO: 7212 for examination. This election applies to currently pending claims 1-4 that are readable thereon. Furthermore, in response to the additional requirement by the Examiner that Applicants identify the protein of Table 1, if any, that corresponds to the elected invention, Applicants respectfully point out that according to Table 1, SEQ ID NO: 7212 corresponds to a probable gibberellin C-20 oxidase. This additional requirement applies to currently pending claims 5-7 that are readable thereon.

The Office Action further states that “Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement”.

Office Action at pages 2-3. However, in the Election Requirement, the Examiner specifically states “[t]his is not an election of species.” Election Requirement at page 3 (emphasis in original). To the extent that Applicants are alleged not to comply with this requirement, Applicants respectfully request clarification on this issue.

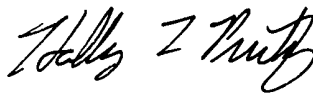
Applicants also restate their position that election of a single nucleotide sequence is improper and Applicants believe no serious burden would result by the search and examination of at least ten nucleotide sequences. The election of a single nucleic acid sequence contravenes the USPTO policy as set forth in the Manual of Patent Examining Procedure stating that “to further aid the biotechnology industry in protecting its intellectual property without creating an undue burden on the Office, the Commissioner has decided ... to permit a reasonable number of such nucleotide sequences to be claimed in a single application.” (MPEP, 8th ed., August 2001, Section 803.04). The MPEP further provides that “[i]t has been determined that normally ten sequences constitute a reasonable number for examination purposes.” (emphasis added) *Id.* While the Examiner requires that a single nucleotide sequence be selected, no reason has been provided for this deviation from articulated Patent Office policy.

Based upon the foregoing, Applicants submit that the prior Response dated October 2, 2002, was fully responsive to the Election Requirement mailed July 2, 2002. However, to facilitate prosecution, Applicants have provisionally elected, with traverse, SEQ ID NO: 7212 for examination.

In view of the above, each of the presently pending claims is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding election requirement and to pass this application to issue. Should the Examiner have any questions regarding this application, the Examiner is encouraged to contact Applicants' undersigned representative at (202) 942-5000.

In the event that extensions of time are necessary to prevent abandonment of this patent application, then such extensions of time are hereby petitioned. Applicants do not believe any additional fees are due in conjunction with this filing. However, if any fees under 37 C.F.R. 1.16 or 1.17 are required in the present application, including any fees for extensions of time, then the Commissioner is hereby authorized to charge such fees to Arnold & Porter Deposit Account No. 50-2387, referencing matter number 16517.114.

Respectfully submitted,



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